CURRENT LEGAL ISSUES AFFECTING PRIVATE COLLEGES AND UNIVERSITIES

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CURRENT LEGAL ISSUES AFFECTING PRIVATE COLLEGES AND UNIVERSITIES

A. PUBLIC SAFETY - THE FUNDING PRIORITY DIALOGUE

B. FREEDOM FROM HARASSMENT

C. DISCIPLINARY PROCESSES: FACULTY, STUDENTS & STAFF

D. CATHOLIC CANON LAW & AMERICAN JURISPRUDENCE IN ACADEMIA: THE INTERSECTION OF TWO LEGAL SYSTEMS
   (paper provided under separate cover at optional evening workshop)

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Public Safety Issues Confronting Private Colleges:
The Funding Priority Dialogue

On January 9, 1999 the New York Times ran a front page lead story that described the following scenario (at an institution like one of ours):

A. In 1983 an institution sustained a serious violent incident at one of its facilities, after which it conducted an investigation.
B. The investigation concluded with several recommendations among which was a security review of all of the institution’s facilities and the funding of specific security measures including centralized gathering of information on security issues for quick analysis and response.
C. Thereafter, several senior institution administrators asked for the implementation of the recommendations of the report and were met with a denial because of “lack of funds” or “other priorities.”
D. The administrator chiefly responsible for the security at the facility countered with requests suggesting that “... the facility profile, in a congested, downtown location is cause for serious concern” and asked for a comprehensive review of the facility security status.
E. These warnings were met with the same lack of enthusiasm and the administrator was advised that a “new facility would be ideal” but that the administration had “reviewed the case and understood the concerns.”
F. Repeated requests by the administrator were viewed by senior administration as though the administrator was “a nuisance who was obsessed by security” despite reports of criminal activity in the immediate area of the facility, including muggings. Items that were requested in the punch list included new garage doors, new perimeter fences, new types of doorways with closures and new locking systems.
G. In mid-1998 the institution suffered yet another devastating facilities incident which made national news for several days. This incident was capped by a second risk management report which reported a “collective failure” by several divisions of the institution over a period of time to provide adequate security to the facilities of the institution consistent with the recommendations of the first (1983) report.
H. The senior responsible institute official in accepting the new report stated “it reminds us all that no matter how much we care, no matter how much we do, we can always do more when the lives of our people are on the line.”

Post Script:

1. A multiplicity of lawsuits is expected to follow citing both reports and media investigation footage as evidence of negligence (reckless disregard; criminal negligence?)

2. In a decision made public January 11, 1999, the trial judge in the case against the City University of New York (and others) regarding foreseeability and the proximate cause of the wrongful death of nine people in a 1991 stampede at a College gymnasium wrote: "It does not take an Einstein to know that young people attending a concert...would not be very happy and easy to control if they were unable to gain admission to the event because it was oversold." (N.Y. Times 1/12/99 B-3)
1. Level of Security
   -for students and staff to enjoy that average degree of security that is similar for citizens of the community.

2. Administrative Responsibility
   -security assigned by table of organization, designing authority.

3. Building Access
   -restrict, monitor or control access based on risks in the neighborhood, academic values and costs of enforcement.

4. Grounds of Access
   -is it feasible and advisable to restrict, monitor or control access to the campus grounds including outside visitors?

5. Grounds Maintenance
   -grounds-keeping standards viewed from security point of view.

6. Adequacy of Outdoor Lighting
   -outdoor lighting from a security point of view.

7. Monitoring of Outdoor Lighting
   -systematic report on lighting outage.

8. Security Rules or Guidelines
   -written rules for personal security should be realistic.

9. Instructing Campus Community about Security Procedures
   -ensure that all campus members are informed about security risks, procedure for summoning aid and reporting of all criminal incidents immediately.

10. Information about Criminal Incidents

11. Responsibility to Respond to Security Emergencies
    -one or more persons, on duty, to respond to security emergencies at all times with responsibility for discretionary decisions.

12. Security Personnel
    -provide some campus or contract security personnel to patrol and safeguard institution; document alternative and recognize the administration has ultimate responsibility for number and quality of personnel provided.

13. Administrative Oversight of Security Department
    -chief of security should report to senior administrator.

14. Supplemental Security for Special Events
    -duties should be defined and all functions covered.

15. Training Security Officers
    -training should be commensurate with the functions to be performed and maintained on a current basis.

16. Probationary Period for Security Officers
    -period of six weeks or longer.

17. Monitoring Performance of Security Officers
    -document the process.

18. Discipline of Security Officers
    -document procedures for disciplining officers.

19. Arrest Powers
    -if officers lack authority to make
or local police.

20. **Relations with Local Police**
   - establish communications and relations with local police.

21. **Incident Reports**
   - have report forms.

22. **Security Vehicles**
   - security transport as necessary for security coverage, patrol, escort and emergency aid.

23. **Equipment for Security Personnel**
   - patrol officers should have two-way radios, uniforms, flashlight, and handcuffs (if authorized to make arrests). Other equipment should be issued as necessary.

24. **Guns and Mace**
   - if security officers are authorized to carry guns or mace, the institution should ensure that all legal requirements are satisfied, officers are qualified for such weapons, written policy governs use of such weapons, all subject to at least annual review.

25. **Student Security Patrols**
   - must be supervised by security department and should not engage in confrontation with suspected wrong-doers.

26. **Escort or Shuttle Service**
   - as necessary for risky areas or students alone after dark.

27. **Coeducation Student Housing**
   - may be appropriate from a social and security point of view.

28. **Student Housing Security Rules**
   - assess the feasibility and desirability of having and enforcing rules controlling access of non-residents to student housing, based on security standpoint.

29. **Supervision in Student Housing**
   - on-campus or institution run off-campus housing for undergraduates should ensure responsible supervision for security of the residents; and provide adequate training.

30. **Locking Outer Doors to Student Housing**
   - at least during nighttime hours unless access is directly monitored at student housing entrance.

31. **Room Door Locks in Student Housing**
   - individual room doors should be equipped with locks that are reasonably secure against tampering.

32. **Master Key Control**
   - maintain and document procedures to ensure key control.

33. **Security of Windows in Student Housing**
   - provide security hardware as necessary and have a system to monitor security of easily accessible windows.

34. **Instructing Resident Students about Security Procedures**
   - make reasonable efforts to ensure that all resident students are adequately informed about security procedures and rules, and how to react and seek aid if unauthorized person obtains access.

35. **Obtaining Emergency Aid in Student Housing**
   - ensure rapid and effective communication between student housing buildings and the security force.

Public Safety/Funding Priorities - By: Charles F. Carletta
Resources Available:

International Association of Campus Law Enforcement Administrators
University Risk Management and Insurance Association

The Campus Security Standards are based on CURRENT SECURITY PRACTICES AND POLICES AMONG AICUM INSTITUTIONS, June 1984; a report prepared by the Community Security Standards Committee of the Association of Independent Colleges and Universities in Massachusetts. Summary prepared by Committee member, James A. True (Security Technology, Inc., Boston, Massachusetts)

Facilities maintenance software, overlays and Auto Cad system are available from: Geographic Data Link, LLC, Troy, N.Y.

Background Cases:

Furck v. University of Delaware, 594 A. 2d 506 (Del. 1991)

Article

Bickel, Robert D. and Lake, Peter F. The Emergence of New Paradigms In Student-University Relations: from "In Loco Parentis" to Bystander to Facilitator. 23 J.C. & U.L. 755 (Spring 1997)

Public Safety/Funding Priorities - By Charles F. Carletta
Freedom From Harassment
In A Private Academic Environment

The Issue: 1. Wellesley College and Marriott International Found Liable; Sexual Harassment Complaint Results in $250,000 In Compensatory And Punitive Damages.

Mary Anne Miller, a food service employee alleged a male supervisor was harassing her with lewd and inappropriate comments and physical gestures. She was then transferred to a kitchen job at lower pay. Miller had been employed 24 years at Wellesley. Only after the court awarded the $250,000 was the supervisor, placed on indefinite leave.

2. Waffle House Found Liable: Sexual Harassment Complaint Results in $8.1 Million Award.

Therese Scribner alleged that Waffle House executives made persistent obscene references to her breasts and to sexual behaviors between 1986 and 1990. Executives also once placed a camera under Ms. Scribner’s skirt and took a photo. Four months after her first complaint, she was fired. Chief Judge Jerry L. Buchmeyer said executives engaged in “severe and pervasive” harassment of Ms. Scribner. Ms. Scribner was awarded $687,000 in actual damages and $7.4 million in punitive damages. [1997]

3. Manhattan Ford, Lincoln Mercury Inc. Found Liable: Sexual Harassment Complaint Results In $3.7 Million Award.

Maureen McIntyre alleged she had been subjected to unwanted sexual overtures from a supervisor while working at Manhattan Ford, Lincoln Mercury Inc. and was fired in December 1993 after filing complaints. In 1997, a New York jury awarded $3.7 million, one of the largest sexual harassment judgments ever awarded in New York. [1998]

4. Johnson & Johnson Consumer Products Inc. Found Liable: Gender Discrimination And Retaliation Lawsuit Results In $11.7 Million Award.

Gennifer Passantino was promoted, after 10 years employment to national account manager for military sales. Her sales “often exceeded forecasts and her performance reviews were excellent, but she was passed up for several promotions.” Feeling discriminated against because of gender, Ms. Passantino complained to human resources at the J&J. Thereafter, she charged, she was subjected to retaliation from supervisors and male co-workers. Ms. Passantino sued and was awarded $11.7 million, including $8.6 million in punitive. [1998]

- cases above reported at http://web.indstate.edu/auction/aacases.html (5/23/98)

Where we are: Burlington Industries, Inc. v. Ellerth 118 S.Ct. 2257 (1998)
1. a. Code of Hammurabi 1600 B.C.
   Shang Dynasty
b. Development of Hebrew Nation 1500 B.C.
   Nubian Kingdom
c. Draconian Laws 621 B.C.
d. Hellenistic Greece 200 B.C.
   Rise of Rome
   Han Dynasty (Great Wall)
   Mayan Civilization
e. Christianity 1 A.D.
   Imperial Rome
f. Formation of Japanese State 450
   “Dark Ages” in Europe
g. Rise of Islam 750
   Tang Dynasty
   Kingdom of Ghana
h. Viking Expansion 900 - 1200
   Crusades
   Mongol migration
i. Renaissance in Europe
   Protestant Reformation
   Slavery in the New World
   Ming Dynasty 1400 - 1500
   Mughal Empire (Taj Mahal)
   Shogunate Japan
j. Manchu Dynasty 1776
   Catherine the Great
k. New Zealand women acquire 1893
   Right to Vote
l. Elections in South Africa 1994

2. a. Declaration of Independence 1776
b. Constitution of the United States 1791
c. Gettsburgh Address 1863
d. 13th Amendment (abolition of slavery) 1865
e. 14th Amendment (states' subrogation) 1868
   (representation apportioned by males)
f. 15th Amendment (right to vote, race) 1870
g. 19th Amendment (right to vote, sex) 1920
h. Civil Rights Act 1964
i. Title IX of the Education
   Amendments 1972

What it means:
   Attitude vs. Conduct
   Quid Pro Quo and Hostile Environment
   Procedure
   Academic Freedom of Expression (AAUP)

Harassment in Academia - By: Charles F. Carletta
Examples of Sexual Harassment

The following conduct could be considered sexual harassment if **unwelcome**:

- Direct or indirect threats or bribes for unwanted sexual activity
- Sexual innuendoes and comments
- Intrusive sexually explicit questions
- Sexually suggestive sounds or gestures such as a sucking noises, winks, or pelvic thrusts
- Repeatedly asking a person out for dates or to have sex
- Touching, patting, pinching, stroking, squeezing, tickling or brushing against a person
- A neck/shoulder massage
- Rating a person's sexuality
- Ogling or leering, staring at a woman's breast or a man's derriere
- Spreading rumor about a person's sexuality
- Graffiti about a person's sexuality
- Name-calling, such as "bitch", "whore", "slut" or "stud"
- Sexual ridicule
- Frequent jokes about sex or males/females
- Letters, notes, telephone calls or material of a sexual nature
- Pervasive displays of pictures, calendars, cartoons or other materials with sexually explicit or graphic content
- Stalking a person
- Attempted or actual sexual assault

**Federal Statutes that apply to you.**

A) Title VI of the Civil Rights Act of 1964 precludes discrimination (for the entire college) on grounds of race, color or national origin in any program or activity receiving federal financial assistance including financial aid sent directly to students. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d.

B) Title VII of the Civil Rights Act of 1964 offers protection to employees, making it an unfair employment practice for any employer to discriminate against any individual with respect to hiring or the terms and conditions of employment because of such individual's race, color, religion, sex, or national origin; affects any employer (including colleges as of 1972) with 15 or more employees. 42 U.S.C. §2000e-2(a).

C) The Age Discrimination in Employment Act protects people forty years of age and over making it unlawful for an employer to fail or refuse to hire or to discharge any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's age; any employer with 20 or more employees is controlled by the ADEA, 29 U.S.C. §621.

D) The Rehabilitation Act of 1973 (Section 504) and its amendments protect handicapped employees stating: No qualified handicapped person shall, on the basis of handicap, be subject to discrimination in employment under any program or activity . . . ; requires affirmative action; applies to the entire institution if it participates in student financial

E) Title IX of the Education Amendments of 1972 prohibits the use of sex as a criterion for admissions in any program or activity receiving federal financial assistance including financial aid sent directly to students; applies to entire campus; exemptions for private single-sex undergraduate colleges, military academies and religious affiliates. Title IX of the Education Amendments of 1972, 20 U.S.C. §1681.

F) Section 1981, which is also a civil rights protective statute, states "all persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, to be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other". 42 U.S.C. §1981.

G) See also:

1. The Equal Pay Act of 1963: prohibits gender discrimination in pay differentials; affects all colleges under the rubric of interstate commerce.

2. Americans with Disabilities Act of 1990; (affects all employees)

3. Rehabilitation Act of 1973, Section 503; affects any recipient of government contract in excess of $2,500.00; requires affirmative action.

4. Vietnam Era Veteran Readjustment Act of 1974; affects any recipient of government contract in excess of $10,000.00; requires affirmative action.

5. Executive Order 11246 (affirmative action required of institutions receiving government contracts totalling $10,000 or more in any one year not including grants or loans);

6. Pregnancy Discrimination Act (amends Title VII) prohibits employment discrimination based upon pregnancy, childbirth, and related medical conditions.

7. Immigration Reform Control Act - creates an affirmative duty to police the eligibility status of your own work force.

H) Federal Procurement Regulations (FARS)

II State Statutes unique to your state such as Article 15 of the Executive Law of the State of New York which imposes rules on all state agencies which are affected by, among other things, all state contracts.

III Campus Policy
A. Trustees policy statement
B. Affirmative action plan
C. Faculty/staff handbooks
D. Tenure system
E. Union Contract
F. Civil service rules

Harassment in Academia - By: Charles F. Carletta
THE DISCIPLINARY PROCESS IN A PRIVATE ACADEMIC ENVIRONMENT

The differences between public and private educational institutions become particularly highlighted when looking at disciplinary processes for students, faculty and staff. Public institutions are required to adhere to the standards of due process (Dixon v. Alabama State Board of Education, 294 F.2d 150 [1961]) and private institutions are relegated to a procedural requirement that must be "fundamentally fair" (See: The Administration of Campus Discipline: Student, Organizational and Community Issues, edited by Brent G. Paterson and William L. Kibler). The following are some areas where continuing discussion in the construction and interpretation of the various judicial systems is important.

a. Off-campus jurisdiction
b. Sexual offenses
c. Student organizations
d. Expression - free speech on a private college campus
e. Academic dishonesty and honor codes
f. Use and misuse of computers
g. Students manifesting serious psychological problems.

Case Study: Just before classes, a young female student on your campus meets some young men from your campus in a downtown bar. They adjourn to the male student's apartment where they engage in dancing and drinking and are joined by two other students such that there are now three men and two women present at this time. The dancing and drinking segue to various levels of undressing and the playing of board games where bets are placed and the loser takes off an article of clothing. One of the boys is later described by one of the women as "obviously excited". At one point one of the women becomes almost totally naked and invites one of the boys (the one who is excited) to join her in a bedroom. The two of them are then joined by a second boy.

After the party breaks up, the girl from the bedroom makes two conflicting statements. (1) A statement to her boyfriend who was not at the party that "she was assaulted" at the party and (2) the day after the party she went into the dormitory room of the other girl who was at the party and advised her that at the party she had "done a threesome last night". All statements indicate
consensual undressing by all parties involved and a consensual entering of the bedroom.

Thereafter, the girl files a criminal complaint with the local police and a complaint with the college alleging sexual molestation as a result of the activities at the party. After interviewing all of the witnesses, the public prosecutor declines to prosecute because of a lack of evidence which would support a finding of culpability "beyond a reasonable doubt". The girl nonetheless wishes to pursue the process on campus claiming that the two alleged perpetrators, the other girl, and the other male at the party are all friends (and she is not) and are in a conspiracy designed to protect the two alleged perpetrators.

The two accused males are stars on your signature athletic team whose season is about to commence.

Questions:

a. How do you investigate?

b. Do you have jurisdiction?

c. How should you time whatever it is you decide to do?

d. How do you coordinate with the municipal prosecutor?

e. What about the press?

f. What risk management techniques do you initiate on the campus regarding other administrators?

g. What's the role of your counseling center?

h. If you have jurisdiction, does your process allow you to decline to pursue the case based upon your own perception of a lack of evidence?

i. Who makes that initial decision and are they trained with the same level of expertise as are you?

j. If not, when does a senior administrator get to make a judgment call without compromising the appellate process within the system?

k. Should the perceived victim be advised to simply sue the alleged perpetrators in a civil lawsuit?

l. Is a process in place to allow (or compel) mediation to be implemented in lieu of a disciplinary hearing?

m. What about the Office of Civil Rights?
A former student of Vassar College (a private institution) filed suit against the college, alleging that Vassar failed to comply with its established disciplinary procedures in investigating and adjudicating a harassment charge against the student. One of the plaintiff's contentions was that Vassar failed to follow its procedures by not declaring him innocent of the harassment once the College Regulations Panel did not find him guilty.

The student handbook provided that following the hearing on a harassment charge against a student, the Panel "shall render an opinion concerning the [accused student's] guilt or innocence." The Panel did render an opinion: it decided that "in view of the available evidence, it was unable to reach a conclusion" with regard to the charges brought against the plaintiff. The Court found that this substantially complied with procedure. The student handbook also stated that a student shall be presumed innocent until guilt is established. The Court noted that in accordance with this policy, Vassar imposed no sanctions on plaintiff and placed nothing in his file that referred to the incident. The Court granted summary judgment to Vassar, finding that the college had provided adequate process to the plaintiff throughout the disciplinary proceedings, and that its actions substantially complied with its own established procedures.

2. Herbert v. Reinstein, et. al. 1

Lincoln Herbert, a student at Temple University School of Law, was accused of using a weapon, pepper gas, inside the law school in violation of the law school code of student conduct. Robert Reinstein, Dean of the Law School, sent a letter to Herbert, referring to the incident and indicating that he was considering suspending Herbert. The letter invited Herbert to meet with the Dean that day to present his version of the incident. After this meeting, Dean Reinstein concluded that Herbert "presented a real threat to the people who worked and studied [at the law school]," and he suspended Herbert, pending a full investigation by the Disciplinary Council. The Disciplinary Council, after a hearing, upheld the suspension.

Herbert filed suit against Dean Reinstein, the law school, and the University, seeking damages and reinstatement. Herbert alleged, among other things, violation of his right to due process of law. The District Court held that the defendants provided sufficient due process, and Herbert appealed. The Court of Appeals reversed in part, finding fault with the informal meeting between Herbert and the Dean. Noting that the right to a hearing is of little value without prior notice of the charges presented, the Court found that Herbert was not given notice of all the reasons on which his suspension was based. 2 In his pre-hearing letter to Herbert, Dean Reinstein did not express to him that the suspension could be based partially

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2 Dean Reinstein admittedly based his decision at least partly on his existing knowledge of several other incidents which demonstrated Herbert's aggressive nature.
on incidents other than the law school pepper gas incident. Herbert therefore had no notice that he had to justify himself with respect to the other incidents in order to avoid suspension.

However, the Court concluded by noting that because Herbert’s ultimate suspension is attributable to the Disciplinary Council, and because Herbert did receive adequate due process in connection with that hearing, he was not entitled to be reinstated. The Court remanded the case to the District Court for determination of damages, if any.


Mitchell was a former student of New York Medical College, dismissed based on his misrepresentations regarding the grades he previously received at another school. Mitchell sought relief in the courts, alleging that he was entitled to a formal disciplinary hearing pursuant to the student handbook prior to dismissal. The trial court agreed with him, but on appeal, his claim was dismissed. The appellate court held that the determination to dismiss Mitchell from medical school “was based upon the exercise of honest discretion after a full review of the operative facts, [and] it was neither arbitrary nor capricious so as to warrant judicial intervention.” The court further reasoned that the section of the handbook upon which Mitchell relied was clearly aimed at misconduct committed by an individual while a student at the medical school, whereas the fraudulent acts committed by Mitchell occurred prior to, and were intended to facilitate his admission to the school. The record demonstrated that it was the settled policy and practice of the school to summarily dismiss any student who engages in such misrepresentations.


Middlebury College, a private college in Vermont, included the following language in the “Hearing Procedures” section of its Student Handbook:

...[D]ue process, insofar as the procedures of the College will permit, will be afforded the party charged. ...[A] student's due process rights cannot be coextensive with or identical to the rights afforded the accused in a civil or criminal legal proceeding. The procedures outlined below are designated, however, to assure fundamental fairness, and to protect students from arbitrary or capricious disciplinary action.

Ethan Fellheimer, a Middlebury student, was accused of raping a female student. Fellheimer was given notice that college judicial procedures, including a hearing, would be commenced concerning this rape charge, and he defended

2 cont’d. For example, Herbert had a heated argument with the owner of a food truck outside the law school; several law school employees had complained of Herbert’s hostile behavior towards them; and there was another pepper gas incident at a local restaurant, in which Herbert sprayed pepper gas at a man who had wielded a knife in the restaurant, even after the man was in police custody.
successfully against it. But he was not given notice that he also would be charged under the Student Handbook’s “Disrespect for Persons” provision, and that even if his conduct fell short of rape, it could be sufficient to constitute “Disrespect for Persons.” Nor was he told with particularity what conduct, if proven at the hearing, would constitute that offence. Therefore, he argued, it was impossible for him to defend against it.

The Court held that a private college is contractually bound to provide students with the procedural safeguards that it has promised. It further held that by failing to give proper and sufficient notice to Fellheimer regarding the “Disrespect for Persons” charge, Middlebury College violated its obligation to be fundamentally fair in its disciplinary proceedings. The Court’s opinion concluded, however, by stating that the College’s failure to give notice did not preclude a rehearing of Fellheimer’s case after proper notice was given.

5. Ahlum v. Tulane Educ. Fund, 617 So.2d 96 (4th Cir. 1993)

After Ahlum, a student at Tulane University (a private institution) was accused by a female student of forcing her to engage in non-consensual sexual relations, he was charged with a violation of Rule III(A) (1) of Tulane’s Code of Student Conduct, which prohibits a student from “causing harm or reasonable apprehension of physical harm including sexual assault.” A hearing board found Ahlum in violation of the Code, and Ahlum was suspended from the University. Ahlum filed suit seeking to enjoin the University from imposing the suspension. One of Ahlum’s contentions was that the hearing procedure was flawed because he was denied the assistance of his own attorney and was forced to cross examine witnesses on his own. The District Court ruled in Ahlum’s favor, but the Court of Appeals reversed. The Court of Appeals noted that Tulane is a private actor not subject to the requirements of the due process clause. Therefore it is not required to allow the student to bring legal counsel to represent him in the hearing; in fact, Tulane may exclude anyone it wishes from the hearing. Additionally, Tulane’s system is designed to be non-adversarial, so that both sides have ample opportunity to present their version of the facts. Since neither side is allowed legal counsel the accused student is not prejudiced by the prohibition.

For these reasons, the Court of Appeals concluded that Tulane’s decision to not allow legal counsel at Ahlum’s hearing should not be disturbed.


This appellate court reversed the trial court’s order that a disciplinary dismissal hearing be re-held de novo because no verbatim recording of the testimony had been taken. The Court ruled that no verbatim recording was required by law (it also was not required by the University policy).

Ray, a student at private Wilmington College, was accused of physically and sexually assaulting a female student at his off-campus apartment. The victim reported the incident to campus authorities, who began disciplinary proceedings against Ray. The complaint alleged that Ray violated provisions of both the Student Code of Conduct (prohibiting physical abuse) and the Student Life Policies Handbook (which included a “Sexual Assault Policy”).

Ray asserted that the College violated its contractual obligation to provide him with a fundamentally fair disciplinary hearing. This due process argument was quickly dismissed by the Court. The College had followed its own judicial policies and procedures, and in any event had afforded Ray notice of the charges against him, and a hearing before the Judicial Board.

The Court then turned to Ray’s argument that the College could not discipline him for an incident that occurred off campus. The Court emphatically disagreed. It stated that “[a]n educational institution’s authority to discipline its students does not necessarily stop at the physical boundaries of the institution’s premises. The institution has the prerogative to decide that certain types of off-campus conduct are detrimental to the institution and to discipline a student who engages in that conduct.”

The Court held that in light of the broad discretion private schools such as Wilmington have in making rules (including rules permitting discipline for off-campus behavior) and setting up procedures to enforce those rules, Wilmington College did not abuse its discretion in disciplining Ray for the off-campus sexual assault.

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**FIRST AMENDMENT ISSUES**


The plaintiffs are members of a fraternity on the campus of George Mason University (a public university). As part of a fund-raising social event on campus, plaintiffs organized and took part in a contest in which members of the fraternity dress as caricatures of “ugly women.” The contest was approved by the University, as it had been in years past. However, after the event, several student leaders complained to the Dean requesting sanctions on the fraternity – they claimed that the dress-up contest had offended them because it perpetuated racial and sexual stereotypes. The Dean imposed discipline on the fraternity, preventing them from holding social and sports activities for a two year probationary period and, during that period, requiring the fraternity to submit other planned activities to the University for advance approval.
The plaintiffs brought suit, arguing that the discipline imposed upon them unconstitutionally punishes their expression protected by the First Amendment. The court agreed with the plaintiffs, concluding that the dress-up contest was an expressive activity and that the University unconstitutionally attempted to control or regulate the expressive message conveyed by the activity. The court granted judgment for the plaintiffs and enjoined the University from imposing any discipline on them as a result of the dress-up contest.

RESOURCES

1. Concepts raised in this paper (including the Model Student Disciplinary Code) are discussed at length in a book published by College Administration Publications, Inc. as The Administration of Campus Discipline: Student, Organizational and Community Issues edited by Brent G. Paterson and William L. Kibler; (1998)

2. The above eight cases were selected and summarized by Edward N. Stoner II, Esq. of Reed, Smith, Shaw & McClay of Pittsburgh, PA and John Wesley Lowery, a Doctoral Fellow at Bowling Green State University who together are currently collaborating on an update to the Model Student Disciplinary Code.

3. Some independent professional mediation experts such as Dr. Tammy Lenski of Essex Junction, Vermont, come from senior administrative positions within academia and have the insight to offer invaluable assistance in resolving otherwise disruptive individual or organizational conflicts which do not easily fit within the limits of a pre-existing disciplinary system.

4. Cheating cases can sometimes be resolved through professional statistical analysis when little other evidence is available. See: FRARY, Robert B. and TIDEMAN, T. Nicolaus Comparison of Two Indices of Answer Copying and Development of a Spliced Index; Educational and Psychological Measurement, Vol. 57 No. 1, February 1997 (Sage Publications) and articles cited therein.


6. HUBER, Peter; Free Speech from Law and Disorder in Cyberspace; Educom Review, March/April ‘98. (Law and Disorder in Cyberspace is published by Oxford University Press).

Disciplinary Process - By: Charles F. Carletta